

**APPLICATION FOR CASE  
REFERRAL — LAND USE  
LITIGATION DOCKET**

JD-CV-129 Rev. 4-18

COURT USE ONLY
LANDUSE


STATE OF CONNECTICUT  
**SUPERIOR COURT  
CIVIL DIVISION**  
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**Instructions**

1. Counsel and self-represented parties seeking to have a case referred to the Land Use Litigation Docket at Hartford must supply all of the information requested below. Without complete and accurate information, this case may not be transferred.
2. Information that does not fit on this form should be attached on a separate sheet, numbered to correspond to the questions on the form.
3. File with the Clerk in the judicial district in which the case is pending.
4. For all parties required to e-file, this Application for Case Referral must be e-filed and the filer must select "Land Use Litigation Application" when naming the form in e-filing.

**Note**

Any objection to the transfer of this case to the Land Use Litigation Docket must be filed within 15 calendar days after the filing of this application. In all cases that require e-filing, the filer must select "Objection to Transfer to Land Use Litigation Docket" when naming the objection in e-filing. File the objection with the Clerk in the judicial district in which the case is pending.

Case name (Plaintiff v. Defendant)		Docket number	
<b>Duncan New Haven Owner LLC v. City of New Haven Board of Zoning Appeals</b>		<b>NNH-CV-19-6089863-S</b>	
Return date	Type of land use matter	<input type="checkbox"/> Affordable Housing Appeals	<input type="checkbox"/> Environmental Enforcement
<b>04/16/2019</b>	<input checked="" type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Inland/Wetlands	<input type="checkbox"/> Miscellaneous Land Use Litigation

**1. Status of litigation:**

a. Administrative appeal:

- ☐ Briefs filed: ☐ Yes ☒ No  
☐ Record filed: ☐ Yes ☒ No

b. Miscellaneous land use litigation/environmental enforcement:

- ☐ Pleadings: ☐ Open ☐ Closed  
☐ Discovery complete: ☐ Yes ☐ No

c. Trial date assigned: ☐ Yes ☒ No

If yes, when is the trial? \_\_\_\_\_ Estimated length of trial: **one-half day**

**2. Reasons why this case should be referred to the Land Use Litigation Docket:**

(SEE ATTACHED SHEET)

**3. List any related cases:**

**4. Do the parties or attorneys consent to the transfer to the Land Use Litigation Docket?** ☒ Yes ☐ No ☐ Do not know

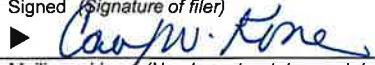
**Certification**

I certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on (date) **04/24/2019** to all attorneys and self-represented parties of record and that written consent for electronic delivery was received from all attorneys and self-represented parties of record who received or will immediately be receiving electronic delivery.

Name and address of each party and attorney that copy was or will be mailed or delivered to\*

**RODERICK RYAN WILLIAMS  
NEW HAVEN CORPORATION COUNSEL (042715)  
165 CHURCH STREET  
NEW HAVEN, CT 06510**

\*If necessary, attach additional sheet or sheets with name and address which the copy was or will be mailed or delivered to.

Signed (Signature of filer)	Print or type name of person signing	Date signed
	<b>Carolyn W. Kone</b>	<b>04/24/2019</b>
Mailing address (Number, street, town, state and zip code)		Telephone number
<b>Brenner, Saltzman &amp; Wallman LLP, 271 Whitney Avenue, New Haven, CT 06511</b>		<b>203-772-2600</b>

[Print Form](#)

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## **CONTINUATION SHEET**

### **Duncan New Haven Owner LLC v. City of New Haven Board of Zoning Appeals** **NNH-CV-19-6089863-S**

#### **2. Reasons why this case should be referred to the Land Use Litigation Docket**

This case raises important questions about due process and fundamental fairness in the consideration of Plaintiff's Special Exception Applications (the "Applications") for a hotel liquor permit and a reduction in required parking.

Uncontradicted evidence before the Board of Zoning Appeals (the "BZA"), including a City of New Haven City Plan Department lengthy Advisory Report, an Advisory Report from the City of New Haven City Plan Commission and the uncontradicted testimony of 11 neighbors and business owners, including expert testimony, recommended that the BZA grant the Applications for this 100 plus year old hotel, which had never had any parking. However, after the public hearing on the Applications was closed and during deliberations, certain BZA members advocated for the denial of the Applications, because Plaintiff had not provided the BZA with a valet parking agreement for off-site parking, although no valet agreement had ever been requested. The City Plan Department had recommended that as a condition of approval of the Applications, a valet parking agreement be provided when the City signed off on the State liquor permit application, which sign-off would not occur until after the BZA had granted the Applications. Further, there was no regulation requiring the provision of a valet agreement as part of the Applications, and, during the public hearing on the Applications, although, there was a discussion about whether Plaintiff agreed to the condition of approval regarding providing the valet agreement at the time of sign-off for the liquor permit (which Plaintiff agreed to do), no member of the BZA requested a copy of the valet agreement or indicated that the Applications were incomplete without a copy of the valet agreement.

Additionally, during deliberations another member of the BZA urged the denial of Applications, because she claimed that Plaintiff had not produced any residents favoring the granting of the Applications, which statement was not only inaccurate but also does not constitute a legally sufficient basis for denying the Applications. The BZA's denial of the Applications (for which there was no collective statement of the reasons) was unsupported by any evidence, let alone substantial evidence.